



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201336022

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 11 2013

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A = *****
Taxpayer B = *****
Limited Partnership C = *****
Custodian D = *****
IRA X = *****

Dear *****:

This is in response to your request dated August 3, 2012, as supplemented by correspondence dated October 1, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A established IRA X, which distributed an interest in Limited Partnership C on November 14, 20 . Taxpayer A asserts that his failure to accomplish a rollover of this distribution within the 60-day period prescribed by section 408(d)(3) was due to the fact that he did not intend to take a distribution, and did not realize that the interest in Limited Partnership C was no longer a part of his IRA. Further, he asserts that his ability to understand the impact of such distribution and to accomplish a timely rollover was hindered by the need to attend to his spouse's medical issues.

Taxpayers A and B, who are married and filing a joint tax return, represent that Taxpayer A established IRA X, whose holdings included an investment in Limited Partnership C, through Custodian D. In 20 , Custodian D announced that it was no longer willing to act as custodian for Limited Partnership C. Custodian D sent letters informing Taxpayer A that he could transfer the investment in Limited Partnership C to an alternative custodian, liquidate the investment, or request that the investment be "returned to you directly." While the letters did offer the option of a direct transfer to another custodian, Taxpayer A did not understand that unless he elected that option (or accomplished a rollover), his interest in Limited Partnership B would no longer be held in an individual retirement account. Custodian D treated the interest in Limited Partnership C as distributed from IRA X on November 14, 20 .

Taxpayer A believed that his interest in Limited Partnership C remained a part of his IRA until informed otherwise by his accountant in March 20 , after the 60-day rollover period had expired. Taxpayer A's ability to understand the information provided by Custodian D and the effect of Custodian D's actions on his IRA was hindered by the need to attend to his wife's medical condition. Taxpayer B, who had been diagnosed with Alzheimer's disease, and had previously undergone spinal surgery, underwent additional major surgery in 20 . Following this surgery, Taxpayer B suffered additional, painful medical problems and underwent numerous medical tests, appointments, and therapy sessions in an attempt to diagnose and treat her condition. Taxpayer B's medical problems increased in frequency during the period in which Taxpayer A was attempting to deal with the communications from Custodian D regarding IRA X's interest in Limited Partnership C.

When Taxpayer A learned that the interest in Limited Partnership C had been removed from Taxpayer A's IRA, Taxpayer A's representative promptly contacted the Service to inquire about the possibility of a waiver of the 60 day rollover requirement.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of the interest in Limited Partnership C from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check,

whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayers A and B is consistent with their assertion that Taxpayer A did not initiate the situation that led to the distribution of his interest in Limited Partnership C, did not intend to remove this investment from his IRA, and failed to accomplish a rollover because did not understand that the interest in Limited Partnership C was no longer a part of his IRA. Taxpayer A's ability to understand the impact of Custodian D's action and to accomplish a timely rollover was further hindered by the need to attend to his spouse's medical issues during the relevant period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of the interest in Limited Partnership C from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute the interest in Limited Partnership C into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Taxpayer A's interest in Limited Partnership C will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***** (ID *****) at (**) *****. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures: